

Claimant appeared by and through his attorney, Robert R. Lee of Wichita, Kansas. Respondent and insurance carrier appeared by their attorney, Frederick L. Haag of Wichita, Kansas. The Workers Compensation Fund appeared by and through their attorney, Marvin R. Appling of Wichita, Kansas. There were no other appearances.

RECORD

The record considered for purposes of this appeal consists of the documents filed with the Division of Workers Compensation, including the transcript of Preliminary Hearing held on May 31, 1994, before Administrative Law Judge John D. Clark, and all exhibits attached thereto.

ISSUES

In a Preliminary Hearing Order dated May 31, 1994, Administrative Law Judge John D. Clark ordered respondent to pay temporary total disability benefits and designated Anthony Pollock, M.D., as the authorized treating physician.

From this Preliminary Hearing Order, the respondent, Boeing Military Airplanes, filed an application for review before the Appeals Board raising the sole issue as to whether claimant suffered an accidental injury arising out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The foregoing issue is one of the issues enumerated in K.S.A. 44-534a(a)(2), and is subject to the review by the Appeals Board.

On February 27, 1994, at approximately 5:00 p.m., while claimant was working as a jig builder on second shift for the respondent, he returned from the restroom, sat down at the computer for about ten minutes and was unable to get up from the computer because of the severe pain in his lower back. The fire department transported the claimant to St. Joseph's Hospital emergency room in Wichita, Kansas where he was treated and released. The next day he was treated at the Minor Emergency Center and two days later was seen by Anthony Pollock, M.D., an orthopedic surgeon.

Dr. Pollock provided conservative treatment which included physical therapy and released him to return to work on April 25, 1994. Claimant worked two hours and was then laid off by the respondent. At the time of the preliminary hearing, the claimant testified that his back remained symptomatic and requested further medical treatment.

Respondent argues that the claimant did not do anything but try to get out of his chair when his back started hurting. It is respondent's position that this is not an accident but is instead a normal day to day living activity.

Part of the claimant's job as a jig builder is to lift and handle various heavy objects and material that weigh up to two hundred and fifty (250) pounds. He testified that prior to going to the restroom on the afternoon in question, he had moved twelve by twelve (12 x 12) blocks weighing approximately fifty (50) to one hundred fifty (150) pounds and angles weighing approximately fifty (50) to one hundred fifty (150) pounds.

After reviewing the whole record, the Appeals Board finds for preliminary hearing purposes that it is more probably true than not true that on February 27, 1994, the claimant suffered an accidental injury arising out of and in the course of his employment with the respondent. The Appeals Board finds that it is reasonable to conclude that the claimant injured his back prior to sitting in the chair to operate the computer while he was moving heavy objects and then felt the effects of such injury when he tried to get out of the chair.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated May 31, 1994, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Robert R. Lee, Attorney at Law, 1861 N. Rock Road, Suite 320, Wichita, KS 67206
Frederick L. Haag, Attorney at Law, 700 Fourth Financial Center, Wichita, KS 67202

Marvin R. Appling, Attorney at Law, PO Box 3886, Wichita, KS 67201
John D. Clark, Administrative Law Judge
George Gomez, Director